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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------|-------------|----------------------|-------------------------|------------------|
| 10/084,759 | 02/26/2002 | Meryl J. Squires | 2972-86588 | 4483 |
| 7590 06/07/2004 | | | EXAMINER | |
| Welsh & Katz, Ltd. | | | JONES, DWAYNE C | |
| Thomas W. Tolpin 22nd Floor | | | ART UNIT | PAPER NUMBER |
| 120 South Riverside Plaza | | | 1614 | |
| Chicago, IL 60606 | | | DATE MAILED: 06/07/2004 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | Application No. | Applicant(s) | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---|--|--|--|--|
| | 10/084,759 | SQUIRES, MERYL J. | | | | | |
| Office Action Summary | Examiner | Art Unit | _ | | | | |
| | Dwayne C Jones | 1614 | | | | | |
| The MAILING DATE of this communication app | pears on the cover sheet w | ith the correspondence address | | | | | |
| Period for Reply A SHORTENED STATUTORY PERIOD FOR REPL | VIS SET TO EXPIRE 3 M | IONTH(S) FROM | | | | | |
| THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a replection of the period for reply is specified above, the maximum statutory period Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). | 136(a). In no event, however, may a ly within the statutory minimum of thi will apply and will expire SIX (6) MOI are cause the application to become A | reply be timely filed ty (30) days will be considered timely. NTHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133). | | | | | |
| Status | | | | | | | |
| 1) Responsive to communication(s) filed on the amendment of 22MAR2004. | | | | | | | |
| 2a) This action is FINAL . 2b) ☑ This action is non-final. | | | | | | | |
| 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is | | | | | | | |
| closed in accordance with the practice under I | Ex parte Quayle, 1935 C.L |). 11, 453 O.G. 213. | | | | | |
| Disposition of Claims | | | | | | | |
| 4) Claim(s) <u>1-31 and 35-37</u> is/are pending in the 4a) Of the above claim(s) <u>1-30</u> is/are withdraw 5) Claim(s) is/are allowed. | | | | | | | |
| 6)⊠ Claim(s) <u>31 and 35-37</u> is/are rejected. | ,— , . — , . — , . — , | | | | | | |
| 7) Claim(s) is/are objected to. | | | | | | | |
| | 8) Claim(s) <u>1-30</u> are subject to restriction and/or election requirement. | | | | | | |
| Application Papers | | | | | | | |
| 9) The specification is objected to by the Examine | er. | | | | | | |
| 10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner. | | | | | | | |
| Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). | | | | | | | |
| Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). | | | | | | | |
| 11)☐ The oath or declaration is objected to by the E | xaminer. Note the attache | ed Office Action or form PTO-152. | | | | | |
| Priority under 35 U.S.C. § 119 | | | | | | | |
| 12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document | nts have been received. Ints have been received in A | Application No | | | | | |
| 3. Copies of the certified copies of the priority documents have been received in this National Stage | | | | | | | |
| application from the International Burea | | t or returned | | | | | |
| * See the attached detailed Office action for a lis | t of the certified copies no | t received. | | | | | |
| Attachment(s) | | | | | | | |
| 1) Notice of References Cited (PTO-892) | | Summary (PTO-413) o(s)/Mail Date | | | | | |
| Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08 Paper No(s)/Mail Date | 5) | Informal Patent Application (PTO-152) | | | | | |

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DETAILED ACTION

Status of Claims

- 1. Claims 1-31 and 35-37 are pending.
- 2. Claims 31 and 35-37 are rejected.
- 3. Claims 1-30 are withdrawn from consideration.
- 4. Claims 32-34 are cancelled as per the amendment of March 22, 2004.

Response to Arguments

5. Applicant's arguments with respect to claims 31 and 35-37 have been considered but are most in view of the new ground(s) of rejection.

Election/Restrictions

6. This application contains claims 1-30 are drawn to an invention nonelected with traverse in Paper No. June 25, 2003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Obviousness-type Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 31 and 35-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-18 of U.S. Patent No. 6,355,684. Although the conflicting claims are not identical, they are not patentably distinct from each other because U.S. Patent No. 6,355,684 is directed to the treatment of other infectious microbial diseases with the administration of inter alia *Echinacea purpurea* and benzalkonium halides.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. C. Jones whose telephone number is (571) 272-0578. The examiner can normally be reached on Mondays, Tuesdays, Thursday, and Fridays from 8:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, may be reached at (571) 272-0584. The official fax No. for correspondence is (703) 872-9306.

Also, please note that U.S. patents and U.S. patent application publications are no longer supplied with Office actions. Accordingly, the <u>cited U.S.</u> patents and patent application publications are available for download via the Office's PAIR, see http://pair-direct.uspto.gov. As an alternate source, <u>all U.S.</u> patents and patent application

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publications are available on the USPTO web site (<u>www.uspto.gov</u>), from the Office of Public Records and from commercial sources.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications may be obtained from Private PAIR only. For more information about PAIR system, see http://pair-direct.uspto.gov Should you have any questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 1-866-217-9197 (toll free).

PRIMARY EXAMINER

Tech. Ctr. 1614 June 4, 2004